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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): JP920000045US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents P O Box 1450 Alexandria VA 22313-1450" [37 CFR 1.8(a)]

on May 12, 2006

Signature: Tina Maurice

Typed or printed name: Tina Maurice

Application Number	Filed
09/918,256	July 30, 2001

First Named Inventor: Asamoto et al.

Art Unit	Examiner
2151	Frantz B. Jean

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 36,597
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Kevin M. Mason
Signature

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Telephone number

May 12, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant(s): Asamoto et al.
Docket No.: JP920000045
Serial No.: 09/918,256
Filing Date: July 30, 2001
Group: 2151
Examiner: Frantz B. Jean

I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature: _____ Date: May 12, 2006

Title: Network System, Communication Device, and Communication Routing Method

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MEMORANDUM IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The present invention and prior art have been summarized in Applicants' prior responses.

STATEMENT OF GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 through 18 are presently pending in the above-identified patent application. Claims 1-18 are rejected under 35 U.S.C. §102(e) as being anticipated by Spaur et al. (United States Patent Number 6,516,192).

ARGUMENT

Independent Claims 1, 7 and 13

Independent claims 1, 7, and 13 are rejected under 35 U.S.C. §102(e) as being anticipated by Spaur et al. Regarding claim 1, the Examiner asserts that Spaur

teaches measuring data transfer rates of the two-way communication line and of the one-way communication line (col. 4, lines 41-54; col. 5, lines 60-65). In the Response to Arguments Section of the final Office Action, the Examiner asserts that Spaur teaches bandwidth (data transfer rate measurement), and that "the weighting vector is mathematically combined or otherwise utilized with the channel parameter value to calculate a suitability sub-value for the bandwidth parameter." The Examiner further asserts that Applicant teaches in the specification (page 9, 3rd-4th paragraphs) that "the data transfer rate is judged by estimated total time (including latency/jitter) taken to transfer required data."

Applicants note that Spaur utilizes the bandwidth ***specified*** *for a network channel* to determine the link selection. (See, FIG. 3 and col. 11, lines 22-34.) The bandwidths of 14.4 kbps and 28.8 kbps are standard bandwidth rates of network channels, as would be apparent to a person of ordinary skill in the art. Applicants also note that bandwidth parameters that are *specified* and ***not*** *measured* are conventionally utilized in the art.

Regarding the Examiner's noting that the "weighting vector is mathematically combined or otherwise utilized with the channel parameter value to calculate a suitability sub-value for the bandwidth parameter," Applicants note that Spaur is teaching that ***values are calculated, not measured.***

Regarding the Examiner's comments on page 9 of the present specification, Applicants note that the present disclosure teaches that

> a data transfer rate is judged by estimating total time taken to transfer required data. MPU 14 determines the total time taken to transfer the required data over the communication line, which is presently used for data transfer and also requests the server 20 to transfer the required data over the other communication line, which is not presently used for data transfer, to determine the total transfer time of the required data over the other communication line.
>
> The total transfer time is determined by adding transfer latency which is a time lag between the sending of a request to the server 20 for data transfer and the time the required data begins to be received by the client 10. The transfer time taken to transfer the whole of the required data is determined by the transfer rate and the volume or size of the required data. The transfer rate is determined by the data transfer volume received within a given measurement time after the beginning of reception of the required data.

(Page 9, 3rd-4th paragraphs; emphasis added.)

Applicants note that, while the measurement of a data transfer rate may include components such as latency and jitter, a determination of latency and/or jitter cannot be considered a determination of a data transfer rate, as would be apparent to a person of ordinary skill in the art.

Thus, Spaur suggests measuring other network parameters, "such as packet loss, latency and/or jitter" (col. 11, lines 36-37; see, also, col. 10, lines 7-10, and col. 4, lines 42-47), but does ***not*** *disclose or suggest measuring the bandwidth (data transfer rate) of a network channel.* Independent claims 1, 7, and 13 require *measuring data transfer rates* of the two-way communication line and of the one-way communication line; and selecting one from the two-way communication line and the one-way communication line on the basis of the *measured data transfer rates.*

Thus, Spaur et al. do not disclose or suggest measuring data transfer rates of the two-way communication line and of the one-way communication line; and selecting one from the two-way communication line and the one-way communication line on the basis of the measured data transfer rates, as required by independent claims 1, 7, and 13.

Claims 2, 3, 8, 9, 14 and 15

Claims 2, 3, 8, 9, 14 and 15 are rejected under 35 U.S.C. §102(e) as being anticipated by Spaur et al. Regarding claim 2, the Examiner asserts that Spaur discloses means for determining total time taken to transfer required data over the communication line presently used for data transfer and for determining total time taken to transfer the required data over the communication line not presently used for data transfer (col. 10, lines 15-40; col. 12, lines 24-37).

As noted above, the present disclosure teaches that "the total transfer time is determined by adding transfer latency which is a time lag between the sending of a request to the server 20 for data transfer and the time the required data begins to be received by the client 10." Applicants could find no disclosure or suggestion by Spaur of a total transfer time, as defined in the present disclosure. Claims 2, 3, 8, 9, 14, and 15 require *determining or measuring* ***total time*** *taken to transfer required data over the communication line presently used for data transfer and determining or measuring* ***total***

time *taken to transfer the required data over the communication line not presently used for data transfer.*

Thus, Spaur et al. do not disclose or suggest determining or measuring total time taken to transfer required data over the communication line presently used for data transfer and determining or measuring total time taken to transfer the required data over the communication line not presently used for data transfer, as required by claims 2, 3, 8, 9, 14, and 15.

Claim 17

Claim 17 are rejected under 35 U.S.C. §102(e) as being anticipated by Spaur et al. In particular, the Examiner asserts that Spaur discloses requesting the server to transfer data over the faster communication line not presently used, in parallel with the data transfer over the slower communication line presently used (col. 8, lines 6-63).

Applicants, however, could find no disclosure or suggestion by Spaur of requesting the server to transfer data over the faster communication line not presently used, ***in parallel*** with the data transfer over the slower communication line presently used. Claim 17 requires suggest requesting the server to transfer data over the faster communication line not presently used, ***in parallel*** with the data transfer over the slower communication line presently used.

Thus, Spaur et al. do not disclose or suggest requesting the server to transfer data over the faster communication line not presently used, in parallel with the data transfer over the slower communication line presently used, as required by claim 17.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,

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